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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X	
COASTAL SHEET METAL CORP.,	:
	:
Plaintiff,	:
	:
- against -	:
	:
WACHOVIA BANK, N.A.,	:
	:
Defendant.	:
-----X	

**AFFIDAVIT OF TIMOTHY O. MERCK IN SUPPORT OF  
DEFENDANT'S MOTION TO DISMISS THE COMPLAINT**

STATE OF GEORGIA       )  
                                  ) ss:  
COUNTY OF COBB       )

I, Timothy O. Merck, being duly sworn, deposes and says:

1. I am a Vice President at Wachovia Bank, N.A. ("Wachovia"). I make this affidavit in support of Wachovia's motion to dismiss the verified complaint in this action, pursuant to Fed. R. Civ. P. 12(b).

2. For the past 26 years, I have served as an officer of several banking institutions and have moved from bank to bank as each was acquired: The National Bank of Georgia, 1981 to 1986, First American Bank N.A., 1986 to 1992, SouthTrust Bank,

1992 to 2005, and Wachovia from 2005 to present. My duties and responsibilities included Custodian Of Records, Manager of Criminal Investigations and similar duties. Before entering the private sector, I served as a police officer for 16 years, with the City of Atlanta Police Department and the MARTA Transit Police where I retired as the Captain of Police.

3. In connection with investigating plaintiff Coastal Sheet Metal's ("Coastal") claims, I personally gathered and reviewed the relevant Wachovia records kept in the ordinary course of business. This Affidavit is based on my review of these records and with a full understanding of the requirements and penalties associated with sworn testimony.

4. Attached as Exhibit A is a true and correct copy of the account history for Wachovia, f/k/a First Union Bank N.A. (hereafter, just "Wachovia"), account number 2000008759474, which was created in the ordinary course of business. The account history indicates, among other things, that:

(i) Coastal's account was opened on or around February 16, 2001 with an opening deposit.

(ii) Twenty-five (25) checks, totaling \$336,664.50, were deposited into the account. This is shown by the number of times a "Credit" was given to the account from the "Source" of "Check Processing."

(iii) All funds were withdrawn from this account by April 7, 2003.

5. Attached as Exhibit B are true and correct copies of two bank statements issued for account number 2000008759474, which were created in the ordinary course of business. These documents indicate that: (i) Wachovia account number 2000008759474

was held in the name of "Coastal Sun Metals, Inc." (hereafter, "Coastal Sun Metals Account"); and (ii) the Coastal Sun Metals Account was serviced and maintained through Wachovia's "RSB - Dumont" branch.

6. Attached as Exhibit C is a true and correct copy of the Branch Details for the Wachovia branch located at the Dumont Financial Center, Two W. Madison Ave. Dumont, N.J. As indicated in this document, the Dumont, N.J. branch has the branch number of "95743" (hereafter, "Branch 95743").

7. Twenty (20) of the 25 checks deposited into the Coastal Sun Metals Account are included as exhibits to this Affidavit. These 20 checks list payees such as "Coastal Sheet Metal," "CSM," "C.S.M.," or "CMS," and are endorsed to "C.S.M."

8. In the ordinary course of business, a corresponding deposit slip is created for every check deposited at Wachovia. These corresponding deposit slips generally contain documentation indicating when and where a check was cashed.

9. As indicated in Exhibit A, eight checks were deposited into the Coastal Sun Metals Account before June 1, 2001 (as shown, again, by the number of times a "Credit" was given to the account from the "Source" of "Check Processing"). Attached as Exhibit D are true and correct copies of 3 of these 8 checks, along with true and correct copies of their corresponding deposit slips, consisting of checks deposited on or about April 20, 2001, April 27, 2001 and May 11, 2001.

10. My investigation to date has not been able to locate true and correct copies of the remaining 5 checks deposited into the Coastal Sun Metals Account before June 1, 2001, or true and correct copies of their corresponding deposit slips. As indicated in Exhibit A, these checks were deposited on or about February 16, 2001, February 23,

2001, March 14, 2001, March 29, 2001 and April 16, 2001. Because these checks were deposited more than 6 years ago, and the Coastal Sun Metals Account has been closed for over 4 years, it is possible that they were purged from Wachovia's records in the ordinary course of business.

11. Attached as Exhibit E are true and correct copies of 11 checks deposited into the Coastal Sun Metals Account between July 23, 2001 and December 27, 2002, along with true and correct copies of their corresponding deposit slips. The plain face of the checks' corresponding deposit slips indicates that that the Coastal Sun Metals Account was serviced and maintained at Branch 95743. In addition, the plain face of each of these checks' corresponding deposit slips contains documentation indicating: (i) when the check was deposited; and (ii) that the check was deposited at Branch 95743 (which, as indicated by Exhibit C, is located in Dumont, N.J.). This documentation takes the form of either a validation printed by the teller machine on the deposit slip, or a teller stamp affixed to the deposit slip by the bank teller handling the deposit. All this documentation was placed on the deposit slip at or around the time the check was deposited, and was placed on the check in the ordinary course of business.

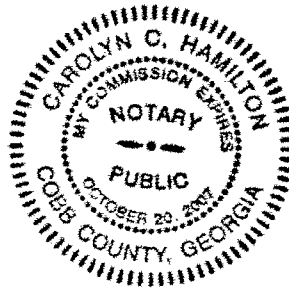
12. Attached as Exhibit F are true and correct copies of 6 checks deposited into the Coastal Sun Metals Account between February 8, 2002 and November 8, 2002, along with true and correct copies of their corresponding deposit slips. The plain face of the checks' corresponding deposit slips indicates that that the Coastal Sun Metals Account was serviced and maintained at Branch 95743. With respect to these checks, the documentation on the corresponding deposit slips does not plainly indicate where they were deposited.

13. Attached as Exhibit G are true and correct copies of the electronic journals of the tellers who processed the checks included in Exhibit F. The plain face of these electronic journals indicates: (i) when the check was deposited; and (ii) that the check was deposited at Branch 95743 (which, as indicated by Exhibit C, is located in Dumont, N.J.). These electronic journals were created at or around the time the check was deposited, and were created in the ordinary course of business.

  
Timothy O. Merck

Subscribed and sworn to this  
21<sup>st</sup> day of September 2007.

  
Notary Public



**DECLARATION OF SERVICE**

Bradford C. Mulder, hereby declares under penalty of perjury, pursuant to 28 U.S.C. § 1746, that:

I am the Managing Clerk for the law firm of Hunton & Williams LLP, attorneys for Wachovia Bank, N.A.

That on September 21, 2007, I served a true copy of the attached Affidavit of Timothy O. Merk in Support of Defendant's Motion to Dismiss the Complaint, with exhibits, on Plaintiff's counsel via the Court's ECF System and via First Class Mail, to the address listed below, by depositing the same in a duly enclosed and sealed wrapper, with the correct postage thereon, in an official letter box duly maintained by the Government of the United States of America within the State of New York.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 21, 2007.

  
Bradford C. Mulder

TO: Brian L. Gardner, Esq.  
Sullivan Chester & Gardner, P.C.  
475 Park Avenue South, 33<sup>rd</sup> Floor  
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